

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

JASON LEE VAN DYKE )  
VS. ) Civil No. 4:18CV247  
THOMAS CHRISTOPHER RETZLAFF )

SCHEDULING CONFERENCE  
BEFORE THE HONORABLE AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE  
MAY 31, 2018

APPEARANCES

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Mazzant,  
3 and we're here in case 4:18CV247. Have you already done  
4 your appearances?

5 Okay. So you've already done your appearances. I  
6 would ask one thing is, I am in my courtroom with my  
7 court reporter taking the record down. Every time  
8 everyone -- every time someone speaks, please identify  
9 yourself so we can get a good record.

10 Now we're set for basically the case manager  
11 report conference today. I know that you already have  
12 agreed to the dates and we're still having a conference,  
13 because I wanted to address other matters.

14 The first thing I wanted to address is I totally  
15 understand from looking at the pleadings here that the  
16 parties dislike each other significantly, and that's  
17 probably an understatement. However, absent the factual  
18 allegations -- which I understand the factual allegations  
19 in this case require a certain level of pros to be used.  
20 However, I do -- I want to make sure that going forward  
21 in the pleadings and interactions with the Court and the  
22 two parties, I expect the parties to act in a civil  
23 manner.

24 And -- and even though the plaintiff is pro se,  
25 you are a lawyer. I -- I just -- I'm not going to put up

1 with the pleadings -- just virtually any kind of  
2 pleadings that don't deal with the underlying facts of  
3 the case. So I just want to set that stage here.  
4 Because if not, I will start sanctioning. I am not going  
5 to put up with any of that.

6 Any questions about that?

7 First, Mr. Van Dyke?

8 MR. VAN DYKE: No, Your Honor.

9 THE COURT: Mr. Dorrell? Is it Dorrell?

10 MR. DORRELL: This is Jeff Dorrell, Your Honor,  
11 and I understand.

12 THE COURT: Okay. And so of course I'll enter the  
13 scheduling order and deal with that. But I wanted to  
14 deal with -- there's also some other pending motions I  
15 want to mention.

16 Of course, we have -- we have the original Motion  
17 to Dismiss, Document Number 5. We have had the later  
18 Motion to Dismiss based on the same grounds that defense  
19 counsel now has filed. I don't see any reason why I  
20 shouldn't deny the first motion as moot.

21 Any reason why I shouldn't? And then we'll take  
22 up the second motion.

23 MR. DORRELL: This is Jeff Dorrell. No objection  
24 to that, Your Honor.

25 THE COURT: Okay.

1 MR. VAN DYKE: This is is Jason Van Dyke. No  
2 objection to that, Your Honor.

3 THE COURT: So I'm going to go ahead and I'll  
4 enter an order denying Docket Number 5, the original  
5 Motion to Dismiss.

6 And then I think that the pro se defendant  
7 originally filed a motion for hearing on that first  
8 motion, Docket Number 16. I'm also going to deny that  
9 motion as moot.

10 Now Docket Number 17 is again filed by the pro se  
11 defendant, it's the Motion to Take Judicial Notice. And  
12 I will say this is not something typically the Court  
13 takes judicial notice of. But let me ask Mr. Dorrell, is  
14 that something you're still asking the Court to pursue?

15 MR. DORRELL: I did file the motion. I'm not at  
16 this time asking the Court to advance on that.

17 THE COURT: I'm sorry, say that again. I didn't  
18 understand what you said.

19 MR. DORRELL: This is Jeff Dorrell again.

20 I am not asking the Court to enter any sort of an  
21 order or otherwise take judicial notice of the fact that  
22 is requested in the pro se defendant's --

23 THE COURT: Okay. That's what I want to make  
24 sure.

25 MR. DORRELL: -- asking for judicial notice.

1           THE COURT: I will go ahead -- I'm going to deny  
2           that Document 17. I'll deny that as moot, without  
3           prejudice if it comes up later. But it's not really  
4           based on something the Court would normally take judicial  
5           notice of anyways.

6           And then I think the other -- okay. And so we  
7           still have pending the Motion 18. The motion -- this was  
8           filed by the pro se, as well, on a failure to have  
9           jurisdiction -- personal jurisdiction.

10          Is that something also, Mr. Dorrell, you want the  
11          Court to take that motion up?

12          MR. DORRELL: No, Your Honor. I -- I think we  
13          probably just waive the personal jurisdiction and we  
14          have -- we're not relying on that at this point.

15          THE COURT: Okay. So you're okay with me denying  
16          that motion as moot?

17          MR. DORRELL: Yes, Your Honor.

18          THE COURT: I will do that, as well. I think we  
19          do have jurisdiction over him, either way.

20          And then -- of course Docket 44 is the second  
21          motion that you filed. And of course, I'll pick that up  
22          in due course.

23          And then you've also filed Docket 47, the  
24          motion -- the motion regarding -- under our local Rule  
25          65.1B, for posting a bond. And I understand -- well,

1 Mr. Dorrell, do you want to be heard on any of that -- on  
2 that matter?

3 MR. DORRELL: If the Court's question is do I need  
4 an oral hearing on it, I think the answer to that is no.  
5 I'm certainly prepared to do that if that would be  
6 helpful to the Court.

7 THE COURT: Well, it's not necessary. I -- I will  
8 tell you, I have declared people vexatious litigators --  
9 litigants before. The problem the Court has with this  
10 kind of a motion is typically the Court -- at least me as  
11 the judge, I've only declared people vexatious litigants  
12 when they have an extensive history in either our court,  
13 or they've been declared a vexatious litigant in another  
14 federal court and had a lot of activity in another  
15 federal court and then try to come to our court asserting  
16 the same kind of matters.

17 So I understand why you want this, but typically  
18 what -- Mr. Van Dyke has done nothing in this court yet  
19 to let the Court really kind of act and -- and grant that  
20 request.

21 I'm just giving you the heads up, Mr. Dorrell,  
22 that I doubt that I'll be granting the motion, just based  
23 on the Court's past practice.

24 MR. DORRELL: Okay. Well --

25 THE COURT: And I just want you -- I want you to

1 understand why that is. Is -- is that I understand he's  
2 filed other cases. But even so, he's done nothing in  
3 this court -- he has not had a history in this court. So  
4 the Court has done things like this before or some -- in  
5 some cases we -- we bar the ability to file anymore  
6 lawsuits on a certain subject matter. We're not -- we're  
7 not -- we're not even close to that -- to reach the level  
8 that would require the Court to do that.

9 And -- and the reason being is, is that if the  
10 Court imposed this bond it -- this -- this kind of -- it  
11 would -- it basically prevents the plaintiff from  
12 proceeding. And I just don't think it's appropriate  
13 under the facts of this case to go to that level. I  
14 don't know when I'll get an order out on that, but I just  
15 wanted to give you the heads up that's where the Court is  
16 leaning.

17 MR. DORRELL: Your Honor, may -- this is Jeff  
18 Dorrell again.

19 May I make just one comment on that?

20 THE COURT: Yes. Go ahead.

21 MR. DORRELL: I certainly am familiar with the  
22 court's jurisprudence on these motions. I have read at  
23 least a couple of opinions, so I well understand what the  
24 Court has just told me. I just want to make just one  
25 observation, and I don't necessarily think this is going

1 to change the Court's mind about it. But under that  
2 local rule, it isn't necessary that the plaintiff has  
3 been declared a vexatious litigant pursuant to the Texas  
4 statute on that, or for purposes of posting a security,  
5 that he has filed a number of other actions in this  
6 court. That has been the ruling when the request was for  
7 a pre-filing injunction.

8 That without -- just because there were other  
9 cases in other courts, that didn't justify a pre filing  
10 an injunction. I think this is different, in that based  
11 on the criteria that other courts have set out to  
12 consider a -- a request for posting securities, that  
13 we -- we have those criteria. That we -- we have been  
14 present. But it has to do with the fact that the  
15 plaintiff does not have assets on which a judgment could  
16 be satisfied. That's actually, you know, one of the --  
17 the things that gives rise to this kind of protection.

18 So I hope the Court will give us consideration on  
19 that, but I understand what the Court has told me.

20 THE COURT: Well -- and I'll certainly review it  
21 all. I'm just -- I'm just giving you my thoughts about  
22 it is, is that -- you know, I have had this request made  
23 because we -- we have had -- we have some pro se  
24 litigants here that file a lot of lawsuits. And I  
25 couldn't do it in that case because in about half the



1 cases they actually won because the defendant settled.  
2 And they probably settled for nuisance value, but they  
3 still settled. And so the plaintiff recovered something.  
4 And so just because they file a lot of lawsuits doesn't  
5 necessarily mean they are vexatious. It's a question of  
6 whether or not they are filing -- if all the lawsuits are  
7 frivolous and are meant to harass.

8 So I understand that they're opposite -- Mr. Van  
9 Dyke, did you want to add anything to that?

10 MR. VAN DYKE: I've -- I've got nothing to add to  
11 that, aside from assuming a response, Your Honor, if the  
12 Court orders me to do so. I know that Mr. Dorrell made  
13 reference to some other cases in there. I would be happy  
14 to supply the Court some pleadings, and some of the  
15 cases.

16 THE COURT: Well, I'll take that -- you know,  
17 because of the Court's very heavy docket, I don't know  
18 when I'll get to that. I have given you my general  
19 thoughts but we'll -- I mean I will fully consider the  
20 motion, and even the briefing and -- on the matter.

21 The only other motion that I think is pending  
22 that's just been recently filed is Plaintiff's Motion for  
23 Preliminary Injunction. I'm not going to even bring that  
24 up because it's not even ripe at this point.

25 And then is there anything else I can do for

1 Mr. Van Dyke?

2 MR. VAN DYKE: No, Your Honor.

3 THE COURT: And Mr. Dorrell, anything for the  
4 defendant?

5 MR. DORRELL: Your Honor, with -- with the Court's  
6 permission, I'm going to file later today just a little  
7 advisory to the Court on what I think the statutory  
8 deadlines are, for the TCPA. And if the Court agrees  
9 with me that that is applicable in federal court, then I  
10 just want the Court to have handy something that shows  
11 when the deadlines are for hearings, including an oral  
12 hearing if required, or a ruling on the motion. It will  
13 be a simple, one-page full advisory of the deadlines.  
14 I -- I hope that's not presumptuous.

15 THE COURT: Well, you're welcome to file that kind  
16 of advisory. I don't know -- I haven't looked at the  
17 issue. It's something that -- whether that statute  
18 applies and it's procedural versus substantive law that  
19 has to be applied. I think this Court has -- I think a  
20 lot of Court's deal with it, but don't really deal with  
21 maybe the decision doesn't really apply or not. And I  
22 will tell you right now, even if it does apply, you know,  
23 in terms of trying -- it has certain deadlines that  
24 certainly aren't -- doesn't -- doesn't bind this Court to  
25 that because this Court's docket doesn't allow itself to

1 do that. And the difference in state court is, is that a  
2 state district judge doesn't have to enter any written  
3 decision for their -- for the decision. It's -- it's a  
4 one-page order. Whereas in federal court, we actually  
5 give reasons for why we do everything and so it's not as  
6 quick to get things done.

7 But, yeah, feel free to do that.

8 Anything else, Mr. Dorrell, though, that the Court  
9 can take up for your client today?

10 MR. DORRELL: No, Your Honor. Thank you.

11 THE COURT: And then I raise one other issue and I  
12 know -- is there any possibility, or would the parties be  
13 interested in doing some kind of early mediation? Is  
14 there a way to resolve this amicably? And maybe there  
15 isn't.

16 MR. VAN DYKE: Your Honor, this is -- this is  
17 Jason Van Dyke. Given -- given the history between  
18 the -- between the parties, I -- I can represent to the  
19 Court that I've made several settlement offers to  
20 Mr. Dorrell to tender to his client, wherein -- I'm  
21 sorry, I'm not gonna -- I don't want to tell you what the  
22 contents were. But I -- that I thought were more than  
23 reasonable. He's rejected -- the defendant has rejected  
24 them and has stated that certain terms -- the only way  
25 he'll consider a settlement, that I would not consider

1 acceptable. So at this point I don't think there's any  
2 way of this being resolved through mediation.

3 But if I may, Your Honor, what Mr. Dorrell's last  
4 point was with regards to the TCPA motion. The -- the  
5 TCPA, I'll just remind the Court the rule at this time  
6 that is applicable in federal court that imposes a stay  
7 on discovery until the TCPA motion has been decided.  
8 Which could be a problem with the scheduling deadlines  
9 we've agreed to. So, I would ask the Court to consider  
10 whether that particular provision of the TCPA, whether  
11 there is in fact a stay until the appellate court rules  
12 on that motion.

13 THE COURT: No, I -- I understand. I'll have to  
14 look at that issue. But let's say the statute does apply  
15 and that stay is applicable to this Court. Even if I  
16 have a scheduling order I -- it can -- it can -- I'll  
17 readjust it if it's applicable. But I have to make that  
18 determination.

19 Mr. Dorrell, what about -- would your client have  
20 an interest in trying to do some kind of early mediation?

21 MR. DORRELL: Well, Your Honor, I certainly can  
22 take it. I have had cases where the parties were  
23 antagonistic and where it looked like there was  
24 absolutely no hope of resolution, and when we went into  
25 mediation, to my surprise there was a resolution. So

1       it's possible it's one of those cases. But I agree with  
2       Mr. Van Dyke that there is a level of heat and hostility  
3       between the parties. And the intransigence on my  
4       client's part that I'm not seeing from Mr. Van Dyke,  
5       that's very frustrating, achieving a resolution like  
6       that. So I -- I'm going to -- I'm going to be  
7       Switzerland. If the Court wants to order us to  
8       mediation -- in fact, in past cases I didn't think we  
9       would settle, but we did.

10           THE COURT: Well, I -- the reason I suggest that  
11       it's at least something to consider, is the fact that at  
12       the end of the day let's say we -- fast forward and we  
13       make it to trial. And I don't know that -- what a jury  
14       would do with this case. But also, I don't know if  
15       there's an award, whether or not anything will ever be  
16       collectable. So if there's a way to resolve the case  
17       amicably and end the hostility with the parties,  
18       certainly that would be beneficial. I know there's some  
19       pending motions you probably want to be resolved first  
20       and I certainly appreciate that, and certainly will look  
21       at that. It's something we can always discuss later,  
22       where I can have one of the magistrate judges do it and  
23       it won't cost any money if you go to mediation, other  
24       than travel to come here.

25           But -- so I'll leave that with y'all to think

1 about and percolate in your minds. And I'm not going to  
2 order it today, but -- I mean I probably will order at  
3 some point mediation, but I need to resolve on whether  
4 the statute from the state applies here and all that.  
5 And once I resolve that, if -- if the -- if it -- if it  
6 doesn't apply or if it does apply and I deny it, then I  
7 probably will order mediation at that point.

8 Any other questions?

9 Mr. Van Dyke, any questions for the Court?

10 Okay. Not hearing any. Any for the defense?

11 MR. DORRELL: None from the defense, Your Honor,  
12 thank you.

13 THE COURT: And we may have lost him -- Mr. Van  
14 Dyke?

15 MR. DORRELL: I think we did.

16 THE COURT: Okay. Well we will end the conference  
17 and adjourn. Thank you.

18 MR. DORRELL: Thank you, Your Honor.

19 (End of proceedings)  
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25

1 I certify that the foregoing is a correct transcript from the  
2 record of proceedings in the above-entitled matter.

3

4 /s/ Lori Barnett  
5 COURT REPORTER

7/12/18  
DATE

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